

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Murray	Team: Team # 2	CCRB Case #: 201301096	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/09/2013 11:35 PM	Location of Incident: Dumont Avenue and Sheffield Avenue	Precinct: 75	18 Mo. SOL 8/9/2014	EO SOL 8/9/2014	
Date/Time CV Reported Wed, 02/13/2013 12:36 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/20/2013 4:13 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Burt Antoine	01082	939877	MP SQD
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ryan Monteleone	13366	950903	PBBN
2. POM Michael Tynion	09545	953503	PBBN
3. POM Haras Karimi	21994	952921	PBBN
4. POM Edward Malone	21572	951958	PBBN
5. POM Christophe Amato	05756	951503	PBBN
6. POM Christophe Walters	17260	952335	PBBN
7. POF Annie Lowers	07755	951942	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Burt Antoine	Force: Sgt. Burt Antoine used pepper spray against § 87(2)(b)	
B.SGT Burt Antoine	Discourtesy: Sgt. Burt Antoine acted rudely toward § 87(2)(b)	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D. An officer	Force: An officer used a chokehold against § 87(2)(b)	

Case Summary

On February 13, 2013, § 87(2)(b) filed this complaint with the Internal Affairs Bureau (IAB) via phone, generating IAB log 2013-6876 (Enc. 3a – 3i). This case was received at the CCRB on February 20, 2013 (Enc. 4a – 4b). On February 9, 2013, at approximately 11:35 p.m., § 87(2)(b) was arrested at Sheffield Avenue and Dumont Avenue, in Brooklyn. The following allegations resulted:

- **Allegation A – Force: Sgt. Burt Antoine used pepper spray against** § 87(2)(b)
- **Allegation B – Discourtesy – Sgt. Burt Antoine acted rudely toward** § 87(2)(b)
§ 87(2)(g)
- **Allegation C – Force: Officers used physical force against** § 87(2)(b)
- **Allegation D – Force: An officer used a chokehold against** § 87(2)(b)
§ 87(2)(g)

This case was originally assigned to Investigator Patrick Harrison, and on November 12, 2013, this case was reassigned to Investigator Diana Murray upon Investigator Harrison's departure from the agency for closing.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b).

NYPD Arrest Photo and Personal Injury Photos

§ 87(2)(b)'s NYPD arrest photo depicts a swollen right eye (Enc. 7a). Upon filing this complaint, § 87(2)(b) provided four personal injury photos to IAB depicting his swollen right eye (Enc. 3e – 3h).

CCRB Statement

§ 87(2)(b) filed this complaint with IAB via phone on February 13, 2013 (Enc. 3a – 3i) and was interviewed at the CCRB on April 12, 2013 (Enc. 6a – 6i). His statements were generally consistent unless otherwise noted below.

On February 9, 2013, at 11:35 p.m., § 87(2)(b) illegally parked his car at the intersection of Dumont Avenue and Sheffield Avenue, in Brooklyn. He immediately noticed the flashing lights of a marked RMP behind him. § 87(2)(b) used his right hand to retrieve his phone from the center console, but did not make any other movements with his hands. He immediately began recording the interaction.

PO Ryan Monteleone, who was identified via investigation and described by § 87(2)(b) as a uniformed white male, approached the driver's side of his vehicle. Sgt. Burt Antoine, who was identified via investigation, and who § 87(2)(b) was unable to describe, approached the passenger's side of his vehicle. PO Monteleone requested § 87(2)(b) information, prompting

§ 87(2)(b) to inquire as to why he was being stopped. PO Monteleone requested his information a second time, and § 87(2)(b) used his left hand to reach for his insurance card, which was located in his overhead visor. § 87(2)(b) then tried to retrieve his license from his right pants pocket. § 87(2)(b) had difficulty removing his license from his wallet because his keys, which were also in his pocket, were in the way. As § 87(2)(b) struggled to retrieve his information from his pocket, PO Monteleone continued to request the information.

Sgt. Antoine requested that § 87(2)(b) exit the vehicle, but he did not do so immediately because PO Monteleone was standing in the way. Sgt. Antoine then walked around to the driver's side of the vehicle as § 87(2)(b) was handing his license to PO Monteleone. § 87(2)(b) did not make any sudden movement or threatening gesture toward either officer as he did so.

Upon arriving on the driver's side of the vehicle, Sgt. Antoine pepper sprayed § 87(2)(b). Either one or both officers then grabbed § 87(2)(b) by his collar and tried to pull him out of his car through his front driver side window. § 87(2)(b) also felt someone pulling him from the passenger's side of the vehicle, though he was unaware when the other officers had arrived and did not see this officer(s) because his eyes were burning from the pepper spray.

§ 87(2)(b) was still buckled into this seat and his low steering wheel was preventing the officers from pulling him from the vehicle, but he was not intentionally flailing his limbs or resisting. Although he was yelling at the officers that he was stuck, they did not stop pulling him. § 87(2)(b) had his cell phone in his hand, and felt an officer slap it out of his hand, though he did not know which officer did this. Eventually, the officers let him go and § 87(2)(b) exited the vehicle voluntarily.

Immediately after § 87(2)(b) exited his car, one or more officers who he could not see grabbed § 87(2)(b) by the back of his collar and slammed him on the ground. No officer gave § 87(2)(b) any instructions before he was put on the ground, and he did not make any statements to the officers before he was put on the ground. The right side of § 87(2)(b)'s face hit the ground when he was put on the ground, and § 87(2)(b) incurred a bruise and swelling on the right side of his face in the area of his right eye.

After being slammed on the ground, § 87(2)(b) got up onto his hands and knees. An officer standing in front of § 87(2)(b) then wrapped his arm around § 87(2)(b)'s neck and pulled up on his neck, choking him. This caused § 87(2)(b)'s breathing to be impaired. § 87(2)(b) did not know which officer choked him. § 87(2)(b) did not resist the officer choking him. § 87(2)(b) repeatedly yelled that he was asthmatic and that he could not breathe.

While the one officer was choking § 87(2)(b), an officer or officers pulled § 87(2)(b)'s hands behind his back to handcuff him. The officer or officers who were pulling § 87(2)(b)'s hands back were causing his body to go down to the ground while the officer choking him was pulling his head up, and this exacerbated § 87(2)(b)'s breathing. The officers forced § 87(2)(b) back down, completely flat on the ground, while the officer continued to choke him.

Prior to being handcuffed, an officer or officers who he could not see punched and kicked him an immeasurable amount of times while he was on the ground. § 87(2)(b) was kicked multiple times in his left ribs and back and once in his head in the area of his left temple. § 87(2)(b) could not see the officers kicking him, but stated that the blows he received felt like kicks. § 87(2)(b) incurred pain to his left ribs and a knot on his left temple. § 87(2)(b) could not judge how long it took the officers to handcuff him.

§ 87(2)(b) did not flail or stiffen his arms, kick or flail his feet, punch or swing at any officer, kick or attempt to kick any officer, or otherwise physically resist arrest at any point. § 87(2)(b) told the officers to get off of him. The officers repeatedly told § 87(2)(b) to stop resisting, and he told them repeatedly that he was not resisting.

§ 87(2)(b) was not aware of any crowd gathering at the location or of anyone trying to

interfere in his arrest. While officers were using force against him on the ground, § 87(2)(b) heard his mother, § 87(2)(b) scream repeatedly from the balcony of his house for the officers to get off § 87(2)(b) that § 87(2)(b) could not breathe, and that she was going to call the news, at which point the officers stopped using force against him.

When § 87(2)(b) finally rose from the ground, he observed multiple officers and police vehicles at the location. § 87(2)(b) was transported to the stationhouse by PO Christopher Walters, who was identified via investigation and who § 87(2)(b) was only able to describe as a uniformed white male. PO Annie Lowers, who was identified via investigation and described by § 87(2)(b) as a uniformed female of an unknown race, also rode with them to the stationhouse.

After being released from police custody, § 87(2)(b) obtained medical treatment at § 87(2)(b) Hospital for lacerations on his wrists from the handcuffs, bruising and swelling to his face, a knot on his right temple, and body pain. Upon filing this complaint with IAB, § 87(2)(b) alleged that he asked an officer at the 75th Precinct stationhouse if he could go to the hospital, but the officer informed him, “No, we’re not taking you. You gonna be all right. We gonna push your paperwork through. You can go after you get out,” but he did not mention the refusal of medical treatment during his CCRB interview. § 87(2)(b) was later informed that his younger brother, § 87(2)(b) had witnessed the incident.

Witness: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b)

CCRB Statement

§ 87(2)(b) provided a phone statement to the CCRB on June 5, 2013 (Enc. 8a), and was interviewed at the CCRB on June 28, 2013 (Enc. 9a – 9g). His statements were consistent with each other unless otherwise noted.

§ 87(2)(b) witnessed this incident from the balcony of his home, located on the § 87(2)(b), in Brooklyn. He observed officers approach § 87(2)(b)’s vehicle, but he was unable to describe any officers he observed during the duration of the incident, due to his vantage point on the fifth floor. Similarly, § 87(2)(b) could not hear the conversation between the § 87(2)(b) and the officers, but noted that § 87(2)(b) sounded annoyed. § 87(2)(b) stopped watching the incident for approximately five minutes, then returned to see two officers attempting to pull § 87(2)(b) out of the driver’s window, and one officer pulling him toward the passenger window. In his phone statement, § 87(2)(b) indicated that the first time he observed the interaction is when § 87(2)(b) shouted, “I can’t breathe” and § 87(2)(b) looked out of the window to see an officer choking him.

While attempting to pull him out, one of the officers had his arm around § 87(2)(b)’s neck in a headlock, and the other officer was pulling § 87(2)(b) by his shoulder or sleeve. This was the only time during the incident that § 87(2)(b) saw an officer put § 87(2)(b) in a headlock. § 87(2)(b) did not see § 87(2)(b) try to thwart the officers’ attempts to remove him from the car by holding on, and he did not flail his arms, make threatening gestures toward an officer, or resist arrest. § 87(2)(b) did not observe an officer knock any objects out of § 87(2)(b)’s hand.

§ 87(2)(b) shouted, “My eyes!” but § 87(2)(b) did not see him get pepper sprayed. § 87(2)(b) went to inform his mother, § 87(2)(b) what was occurring and she joined him on the balcony fifteen seconds later. § 87(2)(b) observed § 87(2)(b) lying on the ground, though he could not recall whether he was face-up or face-down. During his phone statement, § 87(2)(b) stated that he saw officers through § 87(2)(b) to the ground, but during his in-person statement, he indicated that he did not see this first hand. While on the ground, § 87(2)(b)

§ 87(2)(b) had 12 to 15 officers crowded around him, partially obstructing § 87(2)(b)'s view. § 87(2)(b) could not see whether § 87(2)(b) was handcuffed.

§ 87(2)(b) saw seven or eight police officers move their legs as though they were kicking § 87(2)(b) Dennis- Palmer in the area of his head. During his phone statement, § 87(2)(b) stated that he observed the kicks make contact with § 87(2)(b)'s body, but during his in-person statement, he stated that he did not witness this. The officers made these movements a total of 10 to 15 times. § 87(2)(b) did not see any officers punch § 87(2)(b) or strike him with any blunt instruments. § 87(2)(b) was yelling that he could not breathe and that he had asthma. § 87(2)(b) and § 87(2)(b) yelled at the officers from the balcony. Approximately five to six people stood nearby and watched, but no individuals interfered.

§ 87(2)(b) left the balcony to retrieve § 87(2)(b)'s wife, § 87(2)(b) and the officers then left with § 87(2)(b). § 87(2)(b) was unable to find his cell phone after this incident, and therefore, the video footage was irretrievable.

Witness: § 87(2)(b)

§ 87(2)(b) provided a phone statement to the CCRB on June 21, 2013 (Enc. 10b).

At the time of this incident, § 87(2)(b) was awoken by her son, § 87(2)(b) who informed that her brother, § 87(2)(b) was being arrested. § 87(2)(b) looked out of her window and saw 15 to 20 uniformed officers outside, six of which were “on him” kicking, punching and restraining § 87(2)(b) who was yelling that he could not breathe. Three officers knelt on § 87(2)(b)'s back, one or two officers kicked him, two officers punched him, and two officers held § 87(2)(b) down. Officers punched and kicked § 87(2)(b) repeatedly and § 87(2)(b) could not estimate how many times it occurred.

§ 87(2)(b) observed the officers limbs moving in a kicking motion, but was uncertain whether they made contact with § 87(2)(b)'s body, and whether he was handcuffed at the time. § 87(2)(b) could not describe any of the officers in detail, due to her proximity to the incident location and dim lighting in the area.

§ 87(2)(b) yelled to the officers get off § 87(2)(b). § 87(2)(b) got dressed and went outside, but by the time she was downstairs, § 87(2)(b) had been removed from the location.

Witness: § 87(2)(b)

§ 87(2)(b) provided a phone statement to the CCRB on June 5, 2013 (Enc. 10a).

At the time of the incident, § 87(2)(b) was awoken by her mother-in-law, § 87(2)(b) and informed her of the arrest of her husband, § 87(2)(b). By the time she arrived on the balcony, officers had left the scene with § 87(2)(b).

NYPD Statements:

Subject Officer: SERGEANT BURT ANTOINE

- Sgt. Antoine was § 87(2)(b).
- Sgt. Antoine worked from 7:15 p.m. on February 9, 2013, to 4:12 a.m. on February 10, 2013, as a 75th Precinct Field Training Unit Sergeant. He was working with PO Monteleone, in uniform, and assigned to a marked RMP #5939.

Memo Book

At 11:35 a.m., one individual was placed under arrest at Dumont Avenue and Sheffield Avenue by PO Monteleone for disorderly conduct, obstruction of government administration, and resisting arrest.

A request for assistance was transmitted (Enc. 14a – 14c).

CCRB Statement

Sgt. Antoine was interviewed at the CCRB on August 6, 2013 (Enc. 15a – 15d).

On February 9, 2013, at approximately 11:35 p.m., Sgt. Antoine was riding in a patrol car with PO Monteleone when he observed § 87(2)(b) drive through a stop sign without stopping, causing them to execute a traffic stop. PO Monteleone approached § 87(2)(b)'s driver's window while Sgt. Antoine approached the passenger's side of the vehicle. § 87(2)(b)'s hands were visible on the steering wheel and he was not holding a cell phone.

PO Monteleone instructed § 87(2)(b) multiple times to turn off his car and provide his information, but § 87(2)(b) refused to do so, and instead demanded to know why he was stopped. This conversation lasted approximately 40 seconds, during which time § 87(2)(b) made no attempt to retrieve his information or turn off the vehicle. PO Christopher Walters and his partner, who Sgt. Antoine could not recall by name, but who was identified via investigation as PO Annie Lowers, arrived at the location but remained in their RMP.

Sgt. Antoine instructed PO Monteleone to remove § 87(2)(b) from the vehicle, and insinuated to PO Monteleone that he was under arrest. The officers instructed § 87(2)(b) to exit the vehicle and he refused to do so. Sgt. Antoine approached the driver's side of the vehicle and initiated physical contact with § 87(2)(b) by grabbing his arm, in an attempt to pull him from the vehicle, via the door and not the window, as the vehicle door was already cracked open. PO Monteleone grabbed § 87(2)(b)'s left arm as well and pulled in an attempt to get him to exit the vehicle via the door. The officers had § 87(2)(b) almost out of the vehicle, when § 87(2)(b) pulled his body all of the way back into the vehicle and grasped onto the steering wheel. § 87(2)(b) also attempted to push the officers' hands off of him.

Sgt. Antoine pepper-sprayed § 87(2)(b) in order to overcome his resistance to being pulled out of his car. Although the pepper spray struck § 87(2)(b) in the face and caused his eyes to water, it did not cause him to stop resisting. In an attempt to make § 87(2)(b) release the steering wheel, Sgt. Antoine struck § 87(2)(b)'s left wrist once with an asp. No other officer struck § 87(2)(b) a second time. At no point was a cell phone slapped out of § 87(2)(b)'s hands.

PO Walters joined the officers on the driver's side of the vehicle and pulled on § 87(2)(b) Walter's left arm in an attempt to remove him from the vehicle. Sgt. Antoine then moved to the passenger's side of the vehicle in an attempt to push § 87(2)(b) toward the driver's side door so that he could be removed. No officer put § 87(2)(b) in a chokehold or headlock at any point during the incident.

Sgt. Antoine requested additional units to the location, causing approximately 15 officers who he did not know by name to arrive at the location. Some of the back-up officers assisted in removing § 87(2)(b) from the vehicle. Upon removing § 87(2)(b) from the vehicle, Sgt. Antoine and officers attempted to handcuff him while he was standing, but § 87(2)(b) resisted by flailing his arms and kicking at officers. Sgt. Antoine and officers then pulled him to the ground and placed him on his stomach. § 87(2)(b) rolled over, then stood back up, and pushed officers away from him. He was taken to the ground a second time by officers who Sgt. Antoine could not recall.

No officer punched or kicked § 87(2)(b) and he did not see any foot inadvertently make contact with § 87(2)(b)'s head. § 87(2)(b) was successfully handcuffed and transported to the precinct by officers who Sgt. Antoine does not know. Emergency Medical Service (EMS) personnel arrived at the stationhouse, but § 87(2)(b) refused medical treatment and signed a refusal of medical treatment form.

Witness Officer: POLICE OFFICER RYAN MONTELEONE

- *PO Monteleone was § 87(2)(b).*
- *PO Ryan Monteleone worked from 7:30 p.m. on February 9, 2013, to 8:00 a.m. on February 10, 2013, as a 75th Precinct Impact officer. He was working with Sgt. Antoine in a marked van #5939.*

Memo Book

At 11:25 p.m., PO Monteleone executed a car stop at Sheffield Avenue and Dumont Avenue. At 11:30 p.m., a request for additional units was transmitted. At 11:35 p.m., § 87(2)(b) was placed under arrest. At 11:49 p.m., PO Monteleone arrived at the 75th Precinct stationhouse (Enc. 11a – 11d).

Complaint Report and OLBS Arrest Report

PO Monteleone prepared § 87(2)(b)'s arrest paperwork (Enc. 12a – 12e). § 87(2)(b) was arrested for obstructing governmental administration, resisting arrest, disorderly conduct (fighting or violent behavior), and an equipment violation for tinted windows. PO Monteleone noted that § 87(2)(b) refused to provide his driving credentials and refused to step out of the vehicle. As PO Monteleone attempted to remove him from the vehicle, he began flailing his arms, yelling, causing a crowd to gather, continuously pulled away and refused to be handcuffed. After being removed from the vehicle, § 87(2)(b) continued to resist arrest. Physical force was used against § 87(2)(b) to restrain, control and remove him.

CCRB Statement

PO Monteleone was interviewed at the CCRB on July 13, 2013 (Enc. 13a – 13e). His statement was consistent with that of Sgt. Antoine's with any exceptions noted below.

At the time of this incident, PO Monteleone and Sgt. Antoine stopped the car which § 87(2)(b) was driving for unlawful tinted windows. Upon approaching the driver's side of the vehicle, PO Monteleone could clearly see § 87(2)(b)'s hands and that nothing was in them. At no point during this incident did an officer smack a cell phone out of § 87(2)(b)'s hands.

After numerous refusals to provide his information, and no apparent attempts to retrieve his information, PO Monteleone determined that he was going to arrest § 87(2)(b). Officers who PO Monteleone could not recall, but who were identified via investigation as PO Walters and PO Lowers, arrived at the location.

PO Monteleone told § 87(2)(b) multiple times to exit his car, and he refused. PO Monteleone requested additional units, and several uniformed officers who PO Monteleone does not know by name arrived at the location. PO Monteleone opened the driver's door of § 87(2)(b)'s car. PO Monteleone and officers who he could not recall grabbed § 87(2)(b) by his arms and attempted to remove him from the vehicle. § 87(2)(b) resisted by flailing his arms and stiffening his arms. PO Monteleone felt the effects of pepper-spray as he struggled with § 87(2)(b) but he did not witness an officer discharge pepper spray.

As a result of being pulled, § 87(2)(b) fell from the vehicle onto the ground, which also caused PO Monteleone to fall to the ground. PO Monteleone did not put § 87(2)(b) into a chokehold or headlock at any point. While issuing verbal orders to relinquish his arms, PO Monteleone also pulled on § 87(2)(b)'s arms but § 87(2)(b) was in compliant. At one point, § 87(2)(b) stood up and officers got him back onto the ground. No officer threw or otherwise

deliberately placed § 87(2)(b) to the ground. PO Monteleone did not punch or kick § 87(2)(b) or strike him with any blunt instruments, and he did not recall seeing any other officer do so at any point during the interaction.

After approximately five minutes of struggling with § 87(2)(b) PO Monteleone and other officers successfully handcuffed him. PO Monteleone did not recall § 87(2)(b) sustaining any injuries as a result, or requesting medical treatment.

Witness Officer: POLICE OFFICER CHRISTOPHER WALTERS

- PO Walters was § 87(2)(b).
- PO Walters worked from 7:30 p.m. on February 9, 2013, to 4:05 a.m. on February 10, 2013, as a 75th Precinct Impact Auto unit with PO Lowers. Both officers were in uniform and assigned to a marked RMP.

Memo Book

At 11:30 p.m., PO Walters responded to a request for assistance at the corner of Sheffield Avenue and Dumont Avenue, in Brooklyn. At 12:13 a.m., one individual was placed under arrest by PO Monteleone, #§ 87(2)(b) (Enc. 16a – 16d).

CCRB Statement

PO Walters was interviewed at the CCRB on August 12, 2013 (Enc. 17a – 17d). His statement was consistent with that of PO Monteleone's, with any exceptions noted below.

At the time of this incident, PO Walters and PO Lowers stopped at the incident location to see if Sgt. Antoine and PO Monteleone needed help with the vehicle they had stopped. Upon approaching, PO Walters heard § 87(2)(b) refusing to provide his information and refusing to exit the vehicle numerous times for a duration of three to five minutes.

PO Walters, PO Monteleone, Sgt. Antoine, and PO Lowers attempted to remove § 87(2)(b) who was resisting, out of the vehicle. PO Monteleone grabbed § 87(2)(b) by the arm and tried to pull him out. Sgt. Antoine, who was positioned at the passenger's side of the vehicle, tried pushing § 87(2)(b) toward the driver's side of the vehicle to extract him. Sgt. Antoine then came around to the driver's side of the vehicle and grabbed § 87(2)(b) by his shirt to pull him from the vehicle. PO Walters grabbed § 87(2)(b)'s shirt, near the shoulder of the shirt, with his left hand, while using his right hand to reach around the back of § 87(2)(b)'s neck and grab him by the shirt near his right trapezius muscle. PO Walters did not reach his arm across the front of § 87(2)(b)'s neck, choke § 87(2)(b) restrain § 87(2)(b) by the neck, or put him in a headlock at any point during the incident, and he did not see any other officers do so.

§ 87(2)(b) continued to resist being extracted from the vehicle by holding onto the steering wheel and straightening his legs so that he was a larger mass to remove from the vehicle. Sgt. Antoine requested additional units, causing numerous officers who PO Walters does not recall by name to arrive at the location. Eventually, the officers removed § 87(2)(b) from the vehicle. PO Walters did not see § 87(2)(b) being pepper sprayed or struck by an asp at any point. He did not see an object, such as a cell phone, being slapped from § 87(2)(b)'s hand.

Once § 87(2)(b) was removed from the vehicle, PO Walters, PO Monteleone, and approximately three to four other officers forced him to the ground and attempted to handcuff him. § 87(2)(b) continued to resist on the ground by lying on his left arm and refusing to relinquish it to the officers. During the handcuffing process, no officer kicked or punched § 87(2)(b) and they mainly just pulled on his limbs. Once he was successfully handcuffed, PO Walters took § 87(2)(b) to the RMP to be transported, at which time § 87(2)(b) informed PO Walters

that he was sorry and he messed up. PO Walters did not observe any visible physical injuries on § 87(2)(b) he did not complain of any injuries and he did not request medical treatment.

Witness Officer: POLICE OFFICER ANNIE LOWERS

- PO Lowers was § 87(2)(b).
- PO Lowers worked from 5:30 p.m. on February 9, 2013, to 4:05 a.m. on February 10, 2013, as the 75th Precinct Impact Post #23 in the Impact West Zone. She was working in uniform with PO Walters in a marked RMP # 2229.

Memo Book

At 11:30 p.m., PO Lowers responded to a call for additional units at Dumont Avenue and Sheffield Avenue. At 12:13 p.m., one individual was placed under arrest by PO Ryan Monteleone (Enc. 18a – 18c).

CCRB Statement

PO Lowers was interviewed at the CCRB on August 23, 2013 (Enc. 19a – 19d). Her statement was consistent with that of PO Walters' with any exceptions noted below.

At the time of this incident, PO Lowers was with PO Walters when they observed PO Monteleone and Sgt. Antoine engaging in a car stop. PO Lowers and PO Walters approached the driver's side of the vehicle. Sgt. Antoine instructed § 87(2)(b) over ten times to step out of his car, but he did not comply. Sgt. Antoine stated to the other officers that they had to take § 87(2)(b) out of his car. Given that the driver's side door was already cracked open, PO Lowers put her hand on § 87(2)(b)'s elbow and told him ten or more times to exit his car, but he did not comply. All four officers were grabbing § 87(2)(b)'s limbs in an attempt to remove him from the vehicle, but he was resisting by pulling himself back into the vehicle and thrashing his arms.

Sgt. Antoine transmitted a request for additional units over the radio, causing several officers who PO Lowers does not know by name to arrive at the location and assist in pulling § 87(2)(b) out of the vehicle. Though it took several minutes, § 87(2)(b) was eventually extracted from the vehicle and placed on his stomach on the ground. PO Lowers did not recall which officers placed him on the ground, or the manner in which he was placed on the ground. At this point, she was conducting crowd control and did not assist in his apprehension. § 87(2)(b) continued to resist by moving his arms and trying to push himself up off the ground, but officers eventually succeeded in handcuffing him.

PO Lowers did not recall Sgt. Antoine pepper spraying § 87(2)(b) or striking him with an asp. She did not see any officer choke § 87(2)(b) or put him into a headlock. No officer kicked or punched § 87(2)(b) while he was on the ground. PO Lowers did not observe any objects, including a mobile phone, being slapped from § 87(2)(b)'s hand during this incident. § 87(2)(b) did not appear to have any visible injuries, and when PO Lowers and PO Walter transported § 87(2)(b) to the stationhouse, he did not complain of injuries or request medical treatment from them.

Witness Officer: POLICE OFFICER CHRISTOPHER AMATO

- PO Amato was § 87(2)(b).
- PO Amato worked from 7:30 p.m. on February 9, 2013, to 4:08 a.m. on February 10, 2013, as a 75th Precinct Impact Foot Post #8, located at Pennsylvania Avenue and Livonia Avenue. He was working alone and in uniform.

Memo Book

At 11:30 p.m., PO Amato responded a request for an additional unit at Dumont Avenue and Sheffield Avenue. At 12:15 a.m., PO Monteleone put one individual under arrest (Enc. 20a – 20c).

CCRB Statement

PO Amato was interviewed at the CCRB on July 17, 2013 (Enc. 21a – 21d).

At the time of this incident, PO Amato left his foot post and ran two blocks to assist Sgt. Antoine, who had requested an additional unit to assist in a vehicle stop. Upon arriving, PO Amato observed five to ten uniformed officers who he does not know crowded around § 87(2)(b) who was lying on the ground yelling. PO Amato believed that § 87(2)(b) was handcuffed at this time, as he saw Sgt. Antoine standing in the street, speaking into the radio that he had one individual under arrest.

PO Amato did not engage in a physical struggle or observe an officer exert force against § 87(2)(b) at any point, and he believed that the incident had practically concluded by the time he arrived. He did not see an officer pepper-spray, punch, kick, or choke § 87(2)(b). PO Amato had no physical contact with § 87(2)(b). PO Amato did not get a clear look at § 87(2)(b)'s face, and did not observe any injuries on him.

PO Amato was instructed by an unknown officer to drive § 87(2)(b)'s car to the 75th Precinct stationhouse. Upon entering the driver seat of the car, PO Amato smelled pepper-spray in the interior of the car.

Additional Officers Interviewed

PO Edward Malone was interviewed at the CCRB on July 18, 2013 (Enc. 24a – 24f), PO Haras Karimi was interviewed on July 9, 2013 (Enc. 22a – 22f), and PO Michael Tynion was interviewed on July 10, 2013 (Enc. 23a – 23g).

Although all officers acknowledged that their respective assignments were listed in the SPRINT report as having responded to the incident location in response to Sgt. Antoine's request for assistance, they all denied being present. PO Malone contended he was conducting a vertical and PO Karimi and PO Tynion stated that they were in the 75th Precinct stationhouse locker room, preparing to go home, as noted in their memo books.

Medical Records

At the time of his CCRB interview, § 87(2)(b)'s lawyer, § 87(2)(b) refused to allow § 87(2)(b) to sign an HIPAA-complaint authorization for the release of medical records, stating that he would forward the investigation copies of § 87(2)(b)'s medical records. As of the writing of this report, neither § 87(2)(b) nor § 87(2)(b) have provided the medical records.

NYPD Documents

SPRINT

SPRINT Report § 87(2)(b) was generated as a result of this incident (Enc. 25a). At 11:33 p.m. a request for an additional unit was made by Sgt. Antoine. At 11:34 p.m., § 87(2)(b) was placed under arrest by Sgt. Antoine and he transmitted a request for assistance. 75th Precinct foot posts #2, #8, and #4, identified as PO Edward Malone, PO Michael Tynion, and PO Mark Rivera, respectively, resumed patrol. At 11:36 p.m., PO Rivera arrived at the location. A second 75th Precinct sergeant and a housing officer also resumed patrol. At 11:37 p.m., it was transmitted over the radio that "perp resisting arrest."

Medical Treatment of Prisoner Form

A medical treatment of prisoner form was generated for § 87(2)(b) as a result of this incident (Enc. 26a – 26b). It noted that Sgt. Antoine discharged his pepper spray into § 87(2)(b)'s eyes. § 87(2)(b) refused medical attention but was given saline solution to

wash out his eyes. It was also noted that § 87(2)(b) had a swollen right eye and he stated that he could not see out of his eyes.

Command Log

PO Monteleone entered § 87(2)(b) into the command log at 11:50 p.m. and listed his condition as “bruise to right eye, apparently normal.” It was also noted that force was used (Enc. 27a).

Roll Call

The 75th Precinct tour 3 roll call from February 9, 2013, lists Sgt. Antoine as being assigned as a Field Training Sergeant in RMP 3539. PO Karimi was assigned to foot post #2, PO “Lesle” was assigned to foot post #4, and PO Tynion was assigned to “strike” post #8; however, during that same tour, PO Malone is listed as Impact foot post #2, PO Rivera as Impact foot post #4, and PO Amato as Impact foot post #8. PO Lowers is listed as being assigned to Impact post #2, and PO Walters is listed as being assigned to lieutenant operator position (Enc. 28a – 28q).

§ 87(2)(b), § 87(2)(a) 160.50

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on March 18, 2013, claiming mental, emotional and psychological pain and seeking an undisclosed amount of money as redress (Enc. 29a – 29c).

§ 87(2)(b)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Enc. 2a).

Subject Officer CCRB History

- Sgt. Antoine has been a member of the service for 7 years, and there are no substantiated CCRB allegations against him (Enc. 1a).

Conclusion

Allegations Not Pleaded

Upon filing this complaint, § 87(2)(b) alleged that officers refused to provide him medical treatment; however, during his CCRB statement, he did not make this allegation. Similarly, the medical treatment of prisoner report noted that § 87(2)(b) refused medical attention. Therefore, this allegation has not been pleaded.

Identification of Subject Officers

Sgt. Antoine

Sgt. Antoine confirmed his participation in the incident, including pepper-spraying § 87(2)(b) and striking his hand with an asp. § 87(2)(b) contended that he was not looking when his hand was struck, and he believed it to be an officer slapping his phone out of his hand. § 87(2)(b) did not complain of the physical force of the action, but mainly the discourteous action of knocking his phone from his hand. As such, a force allegation for the asp strike is not being

pleaded, and a pepper spray and discourteous action allegation have been pleaded against Sgt. Antoine.

Officers

§ 87(2)(b) alleged that officers who he did not see slammed him to the ground, choked him, punched him and kicked him. No civilian party was able to physically describe the officers, due to their proximity on the fifth floor balcony. Sgt. Antoine, PO Monteleone, PO Walters and PO Lowers confirmed that they physically removed § 87(2)(b) from the vehicle. It was undisputed that an urgent call for assistance was transmitted over the radio, causing over fifteen officers from at least two commands and separate tours to respond to the incident location. All officers interviewed denied using or witnessing the aforementioned degree of physical force. Absent video footage or credible witness statements, the officers who allegedly used force against § 87(2)(b) remain unidentified. As such, a chokehold allegation and a physical force allegation have been pleaded against “officers.”

Investigative Findings and Recommendations

Allegation A – Force: Sgt. Burt Antoine used pepper spray against § 87(2)(b)

Allegation B – Discourtesy – Sgt. Burt Antoine acted rudely toward § 87(2)(b)

§ 87(2)(b) contended that Sgt. Antoine pepper-sprayed him unprovoked, and subsequently slapped his cell phone out of hands. § 87(2)(b) noted that the steering wheel was affixed in a low position that prevented him from easily exiting the vehicle. No other civilian witnesses observed the onset of the police interaction and were able to corroborate § 87(2)(b)'s claims. Conversely, Sgt. Antoine and PO Monteleone contended that § 87(2)(b) refused numerous lawful orders to provide his information and step out of the vehicle, thus resulting in Sgt. Antoine discharging his pepper spray at § 87(2)(b). Additionally, Sgt. Antoine acknowledged striking § 87(2)(b)'s hand with an asp to get him to release his grip on the steering wheel, but denied striking him to cause him to lose his cell phone.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Officers used physical force against § 87(2)(b)

Allegation D – Force: An officer used a chokehold against § 87(2)(b)

§ 87(2)(b) alleged that the pepper spray affected his vision so he could not see which officer(s) grabbed him by his collar, slammed him face first to the ground, choked him, and kicked and punched him in the face and near his torso. § 87(2)(b)'s arrest photo and the supporting medical treatment of prisoner form corroborate § 87(2)(b)'s claim that force was used against

him. All officers interviewed denied using or witnessing the degree and extent of force alleged.

As noted in the “Identification of Subject Officers” section, numerous officers from various commands and tours responded to the incident location to assist PO Monteleone and Sgt. Antoine, who transmitted an urgent call for assistance. Although many of the first responding officers were identified and interviewed, they all denied kicking, punching and utilizing a headlock against § 87(2)(b). Furthermore, video footage and proximal witnesses were unavailable to elucidate the subject officers’ identities. § 87(2)(g).

Team: 2

Investigator:	_____	<u>Diana P. Murray</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date